



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Boardsen Associates, Inc.

File: B-245876

Date: January 27, 1992

James J. Regan, Esq., and Kathleen L. Ranowsky, Esq.,
Crowell & Moring, for the protester.
Joan M. Gibson, Esq., Department of Justice, for the agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Where bidder's Certificate of Procurement Integrity indicates that bidder possesses no information regarding procurement violations and is otherwise complete, the bidder's failure to insert the word "none" in the certificate, which confirms a lack of violations, is not a material omission which would make the bid nonresponsive.

DECISION

Boardsen Associates, Inc. protests the award of a contract for guard services to Ranger Protective Services, Inc., under invitation for bids (IFB) No. MS-91-B-0073, issued by the United States Marshals Service, Department of Justice. Boardsen contends that Ranger's bid should be rejected as nonresponsive.

We deny the protest.

In submitting its bid, Ranger failed to complete certain of the representations in section K of the IFB regarding its small business and small disadvantaged business status, previous contracts, and affirmative action compliance. In addition, Ranger failed to provide an entry under one section of its Certificate of Procurement Integrity, which is the central concern raised in this protest.

The certificate implements 41 U.S.C. § 423(e)(1) (Supp. I 1989), a statute that bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the Office of Federal Procurement Policy (OFPP) Act provisions set forth elsewhere in 41 U.S.C. § 423. The certificate in the IFB provided spaces for the name of the employee responsible

for preparing the offer in paragraph 1; the bidder's name in paragraph 2; any violations or possible violations, as well as the instruction to "Enter None If None Exist," in paragraph 3; and the signature and typed name of the responsible employee at the end of the certificate. Ranger signed and otherwise completed the certificate, but did not insert the word "none," or make any other entry in paragraph 3.

The contracting officer decided that the incomplete and blank representations in section K concerned minor informalities, subject to cure prior to award, in accordance with Federal Acquisition Regulation (FAR) § 14.405.¹ She also determined that Ranger's Certificate of Procurement Integrity complied with the IFB and OFPP Act. Accordingly, she awarded the contract to Ranger on September 19, 1991. After learning of the award, Boardsen filed this protest with our Office.

The certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, a matter of responsiveness. See Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342; FAR §§ 3.104-9(b)(3) and 14.404-2(m). Where, as here, a bid's responsiveness is challenged, we review the bid to determine whether the bid represents an unequivocal commitment to perform without exception the specifications called for in the IFB so that the bidder will be bound to perform in accordance with all the material terms and conditions. Contech Constr. Co., B-241185, Oct. 1, 1990, 90-2 CPD ¶ 264. As a result of the substantial legal obligations imposed by the certificate, and given the express requirement for the certificate to be separately signed, the omission from a bid of a signed and completed Certificate of Procurement Integrity leaves unresolved a bidder's legal commitment to comply with the certification requirements. Consolidated Metal Prods., Inc., B-244543, July 15, 1991, 91-2 CPD ¶ 58.

¹In its original protest, Boardsen challenged this determination by the contracting officer. The agency report elaborated upon the determination, contending that the omissions in Ranger's representations were matters of responsibility or otherwise waivable. Boardsen abandoned these issues by failing to comment upon the agency's response. See Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267. In any event, certifications and representations in section K, such as those not completed by Ranger, have no bearing on the material aspects of a bid, and a bidder's failure to complete them may be waived and corrected after bid opening as minor bidding irregularities. See MDT Corp., B-236903, Jan. 22, 1990, 90-1 CPD ¶ 81.


Boardsen contends that Ranger's failure to insert the word "none" in paragraph 3 is a material omission which makes Ranger's bid nonresponsive. We disagree. Paragraph 1 of the certificate provides that the employee or officer signing the certificate

"hereby certif(ies) that, to the best of [his] knowledge and belief, with the exception of any information described in this certificate, [he has] no information concerning a violation or possible violation of subsection 27(a), (b), (d) or (f) of the Office of Federal Procurement Policy Act"

Because of this express language in paragraph 1, where, as here, the bidder has entered no such information and has otherwise completed and signed the certificate, insertion of "none" in paragraph 3 is redundant. Rather, by the express terms of paragraph 1, the blank space in paragraph 3 constitutes the bidder's affirmation that it has "no information" describing violations or possible violations. Thus, the failure to insert "none" in paragraph 3 does not affect the bidder's legal obligation.² In this regard, Boardsen has not identified any scenario which would render Ranger's certificate, as submitted, unenforceable.

The protest is denied.



 James F. Hinchman
General Counsel

²This case is different than those addressed by our decisions in Inland Serv. Corp., B-242993, June 25, 1991, 91-1 CPD ¶ 601, and 224 Builders, Inc., B-245569, Dec. 11, 1991, 91-2 CPD ¶ _____. In Inland and 224 Builders, the protesters had neither signed nor entered "none" in their certificates. In concluding that the agency had properly rejected the bids as nonresponsive, we found that there was no signature line provided with the certificates, a situation which ordinarily would render the IFBs defective. See Shifa, Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483. In distinguishing Inland and 224 Builders from the Shifa, we found that the failure to insert the word "none" was evidence that the protesters had not been misled by the absence of a signature line since there was no other indication that the firms read and intended to be bound by the terms of the certificates.